

State of California  
Regional Water Quality Control Board  
San Diego Region

EXECUTIVE OFFICER SUMMARY REPORT  
Wednesday, 9 November, 2005

ITEM: 9

SUBJECT: Notices of Violations (NOV) Issued to San Diego County Municipal Storm Water Copermittees: The Regional Board will review and discuss alleged noncompliance by the copermittees in the implementation of the required Watershed Urban Runoff Management Plan of the Municipal Storm Water Permit No. 2001-01 (NPDES Permit NO. CAS 0108758). The Regional Board may act to affirm, modify, or rescind the Notices of Violation and may direct other actions as appropriate. (*John Robertus*)

PURPOSE: This item provides the opportunity for the Board to review further the San Diego County Municipal Storm Water Permit Copermittees' (Copermittees) noncompliance and to consider whether to affirm, modify, or rescind the NOV's or take other action.

PUBLIC NOTICE: The public notification for this item is the Regional Board Meeting Agenda Notice for the November 9 meeting. The Agenda Notice was promulgated on Friday, October 21, 2005, thus providing the necessary 10-day notification.

DISCUSSION: At its October 12, 2005 meeting, the Regional Board informally discussed the information provided in the Executive Officer's Report dated October 12, 2005 concerning the issuance of NOV's to the Copermittees. The NOV's were issued to the Copermittees for failure to implement adequate Watershed Urban Runoff Management Programs (WURMPs), as required by the San Diego County Municipal Storm Water Permit (Permit). The Regional Board's discussion lead to the request by the Regional Board to place on a future Regional Board meeting agenda this topic for further discussion and possible action by the Regional Board.

In preparing for this item at today's meeting, additional information has been developed in response to the request by the Regional Board for a summarization of the

deficiencies of each Copermittee in complying with the Permit's WURMP requirements. The attached Supplemental Report summarizes the deficiencies of the Copermittees by specific watersheds and provides additional background information on the issuance of the NOV's.

During the discussion on October 12, 2005, the Executive Officer stated to the Regional Board that based on the information available, he was not inclined to rescind the NOV's.

**KEY ISSUES:**

1. There are concerns by some Copermittees that the NOV letters may not be soundly based on factual violations.
2. There are concerns by some Copermittees that the NOV letters may have been issued in an inappropriate and untimely manner.
3. There are concerns that the NOV letters may be improperly written or otherwise invalid.
4. There are requests that the NOV letters should be rescinded.
5. The Executive officer has reviewed the NOV letters and determined that as of October 12, 2005, the NOV letters should remain in effect.

**LEGAL CONCERNS:**

The NOV letters are a form of informal enforcement action and there is concern by some Copermittees that the Regional Board may consider further enforcement action regarding the alleged violations cited in the NOV letters.

**SUPPORTING  
DOCUMENTS:**

1. Supplemental Report for Review of Notices of Violation Issued to the San Diego County Copermittees for Watershed Urban Runoff Management Program Implementation, dated October 27, 2005.
2. Review of Notices of Violation Issued to the San Diego County Copermittees for Watershed Urban Runoff Management Program Implementation, dated October 6, 2005. This report is included as an attachment for Item No. B-13 of the October 12, 2005 Executive Officer's Report. The Regional Board members are requested to retain this information for today's meeting.
3. Letter dated October 28, 2005 from the Executive Officer to the Copermittees providing the Supplemental Report dated October 27, 2005.

4. Letters from the Copermittees in response to the issuance of the NOV's. The report attached to the October 12, 2005 Executive Officer's Report contains the previously submitted letters from the Copermittees. Recently received letters are provided here as part of today's material.

RECOMMENDATION(S): The Executive Officer will have a recommendation following the discussion of this item.

**Supporting Document No. 1  
for  
Agenda Item No. 9**

**November 9, 2005 Regional Board Meeting**

**Supplemental Report**  
**for**  
**Review of Notices of Violation**  
**Issued to the San Diego County Copermittees for**  
**Watershed Urban Runoff Management Program Implementation**

By Phil Hammer  
San Diego Regional Water Quality Control Board  
October 27, 2005

## **Introduction**

This report supplements the San Diego Regional Water Quality Control Board's (Regional Board) previously issued October 6, 2005 report titled "Review of Notices of Violation Issued to the San Diego County Copermittees for Watershed Urban Runoff Management Program Implementation."<sup>1</sup> The October 6, 2005 report focused on explaining in detail the lengthy process undergone prior to issuance of Notices of Violation (NOVs) to the San Diego County Copermittees (Copermittees) for inadequate Watershed Urban Runoff Management Program (WURMP) implementation, together with a detailed review of the San Diego River Watershed Copermittees' compliance with the WURMP requirements of the San Diego Municipal Storm Water Permit (Permit). This supplemental report further explains the basis for issuance of the NOVs, while also providing a detailed review of the Copermittees' WURMP compliance in the remaining eight watersheds within San Diego County.

It is important to note that the NOVs were issued because of the Copermittees' non-compliance with only one section of the Permit – the WURMP requirements (section J of the Permit). The remainder of the Copermittees' programs, particularly the implementation of their Jurisdictional Urban Runoff Management Programs (JURMPs), have been found to largely be in compliance with the Permit's requirements. Therefore, the NOVs were not an overarching finding of inadequacy of each Copermittee's entire program. Rather, the NOVs focused on implementation of one component of the Copermittees' overall programs.

Requests for rescission of the NOVs by the majority of the Copermittees have prompted this review. The review is strictly an assessment of whether the watershed activities implemented by the Copermittees are in compliance with the WURMP requirements of the Permit. It is not meant to disparage the many activities that have been conducted by each of the Copermittees. Many of these activities are useful and meaningful, even though they do not constitute full compliance with the Permit. The alleged lack of compliance with the WURMP requirements does not mean that the activities the Copermittees have conducted thus far are not worthwhile; it simply means that more must be done to fully implement the watershed programs required by the Permit.

## **Standard of Review**

Section J.1 of the Permit requires that Copermittees "identify and mitigate the highest priority water quality issues/pollutants in the watershed(s)." Section J.2.d of the Permit requires "an implementation time schedule of short and long-term recommended activities (individual and collective) needed to address the highest priority water quality problem(s)." Taken together, these two Permit sections require that watershed activities be implemented to address and mitigate the highest priority water quality problems within each watershed. Regional Board staff finds that for activities to address and mitigate high priority water quality problems in a watershed, the activities must directly

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<sup>1</sup> October 6, 2005 report is available at [http://www.waterboards.ca.gov/sandiego/eo\\_report/eoreport.html](http://www.waterboards.ca.gov/sandiego/eo_report/eoreport.html) as Item B-13 of the October 12, 2005 Executive Officer Report.

reduce the discharge of pollutants causing those high priority water quality problems during the current permit cycle. This was the principal standard of review used by staff when issuing the NOV's.

The compliance review, however, is complicated by the fact that the permit requires implementation of pollutant discharge reducing activities on two levels, jurisdictional and watershed. Jurisdictional activities are a baseline level of activities required by the Permit that are implemented by the Copermittees in the same manner throughout a jurisdiction. Because basic jurisdictional activities are implemented without regard for watershed conditions, their implementation alone does not constitute implementation of watershed activities as required by the WURMP section of the permit. However, if all the Copermittees in a watershed were to implement activities in their jurisdictions which exceed the basic JURMP requirements, and those activities were organized and implemented on a watershed basis as part of a strategy that targeted the watershed's high priority water quality problems, then those activities could be considered watershed activities. Unfortunately, none of the Copermittees reported significant implementation of such activities in their WURMP annual reports.

For clarification, the following information about watershed activities is provided:<sup>2</sup>

1. A watershed activity should target and reduce the discharge of pollutants causing high priority water quality problems in the watershed. Activities that do not specifically target and reduce pollutant discharges causing high priority water quality problems in a watershed are not watershed activities.
2. Watershed activities should implement an overall watershed strategy collaboratively developed by the Copermittees within a watershed.
3. A significant portion of watershed activities should be implemented to reduce pollutant discharges during the current permit cycle. Watershed activities that have not and will not be implemented during the current permit cycle do not constitute full compliance with the Permit's WURMP requirements.
4. Activities implemented on a jurisdictional basis which exceed the baseline JURMP requirements may constitute watershed activities. Such activities should specifically target and reduce the discharge of pollutants causing high priority water quality problems within a watershed. The jurisdictional activities should be organized and implemented as part of a larger watershed strategy.
5. Specific watershed activities do not need to be implemented watershed-wide, but all Copermittees within a watershed should implement well-coordinated watershed activities.

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<sup>2</sup> Additional information regarding what types of Copermittee activities were not considered watershed activities can be found at page 6 of the October 6, 2005 report.

6. Watershed activities should be new activities; activities that have been conducted for many years without regard for watershed concerns are not activities to be credited as compliance with the WURMP requirements.
7. Education and planning efforts are not by themselves watershed activities. Watershed education and planning is required by permit sections J.2.g and J.2.h; watershed activities are required by section J.2.d.
8. Watershed activities that only consist of monitoring are not sufficient for full compliance with the Permit's WURMP requirements. There must also be an element of the monitoring program that directly results in the reduction of pollutant discharges causing high priority water quality problems.

### **Reporting Issues**

Following issuance of the NOV's, some Copermittees argued that compliance with WURMP requirements is exhibited in their JURMP Annual Reports. While Regional Board staff did express its preference that the Copermittees keep the reporting of their baseline jurisdictional efforts in the JURMP Annual Reports, staff did not state that reporting of watershed activities should be moved into the JURMP Annual Reports, to the detriment of the WURMP Annual Reports. Moreover, footnote 6 of the Permit provides that activities included in the WURMP Annual Reports need not be included in the JURMP Annual Reports, not vice versa. In other words, there is no support for Copermittee arguments that Regional Board staff is responsible for scouring each of the Copermittees' JURMP Annual Reports in order to determine compliance with WURMP requirements. Compliance with the Permit's WURMP requirements should be exhibited in the WURMP Annual Reports.

In addition, in the time period following the issuance of the NOV's, some Copermittees have submitted new information which they claim exhibits that they are currently in compliance with the Permit's WURMP requirements. While this information is useful, it does not negate the NOV's, which were issued based on the Copermittees' compliance status in January 2005, not the compliance status at present. Moreover, some Copermittees have further provided information which they contend exhibits WURMP compliance in January 2005. However, compliance during January 2005 cannot be determined using this newly provided information from the Copermittees. There are several reasons for this: (1) the new information provided does not include dates for when activities were implemented, though some activities described appear to have been implemented prior to this permit cycle, while it seems other activities will be implemented after this permit cycle; (2) the new information provided includes descriptions of baseline JURMP activities which were implemented without regard for watershed conditions; (3) the new information provided differs from the information provided in the signed and certified JURMP Annual Reports; (4) the new information provided includes descriptions of education and planning activities, which are not at issue in the NOV's; (5) the new information does not include a sufficient level of detail for



adequate compliance assessment; and (6) most of the new information was not available to Regional Board staff at the time of compliance assessment in January 2005.

Some Copermittees have also raised issue with the timeliness of the NOV's. As discussed in the October 6, 2005 report, Regional Board staff provided its last comments on WURMP implementation in October 2004, in the form of California Water Code Section 13267 information directives, which requested that the Copermittees respond with information exhibiting improved watershed activity implementation. The Regional Board then assessed compliance based on the Copermittees' WURMP Annual Reports and Section 13267 responses received in January 2005, providing the Copermittees with several months to address Regional Board staff concerns. In assessing compliance in January 2005, staff reviewed the Copermittees WURMP Annual Reports and California Water Code Section 13267 information request responses. In reviewing the Section 13267 responses, staff afforded the Copermittees significant leeway to compensate for the relatively short time period provided the Copermittees for their responses. If the Copermittees had proposed in their Section 13267 responses to implement watershed activities which would directly reduce the discharge of pollutants during the current permit cycle and provided a specific implementation date for those activities, NOV's would likely **have not been issued**. Such proposals were not made in the Copermittees' Section 13267 responses.

### **Compliance Review**

This section includes Regional Board staff's summary and review of the WURMP Annual Reports and Section 13267 responses for each watershed group of Copermittees. Each watershed activity reported by the Copermittees in their WURMP Annual Reports and Section 13267 responses is summarized below, together with Regional Board staff's findings regarding the reported activity.

#### **Santa Margarita Watershed – Copermittee: County of San Diego**

An NOV was not issued for this watershed because of its unique circumstances. Only one Copermittee (the County of San Diego) is located within this watershed, negating the need for collaboration between Copermittees. Moreover, the other entities within the watershed (such as the County of Riverside and Camp Pendleton) are not covered under the Permit, making watershed collaboration difficult.

#### **San Luis Rey Watershed – Copermittees: City of Escondido, City of Oceanside, City of Vista, County of San Diego**

The San Luis Rey Watershed WURMP annual report and Section 13267 response identified the following watershed activities implemented by the Copermittees:

1. “Verification of the river as a bacteria source for mouth exceedances/identification of bacteria sources in the watershed.” While studies to identify sources of pollutant discharges are important, they do not constitute full

compliance with watershed activity requirements. On their own, studies will not reduce pollutant discharges. Implementation of watershed activities which will directly reduce pollutant discharges causing high priority water quality problems is needed.

2. "Preliminary sources investigation of individual TDS parameters." While studies to identify sources of pollutant discharges are important, they do not constitute full compliance with watershed activity requirements. On their own, studies will not reduce pollutant discharges. Implementation of watershed activities which will directly reduce pollutant discharges causing high priority water quality problems is needed.
3. "Guajome Lake external phosphorus loading investigation/internal phosphorous management." While monitoring studies are important, they do not constitute full compliance with watershed activity requirements. On their own, studies will not reduce pollutant discharges. Implementation of watershed activities which will directly reduce pollutant discharges causing high priority water quality problems is needed.
4. "Continued Assessment and Activity Identification." This item of the WURMP annual report is largely a planning activity. Moreover, the activities discussed in the annual report were not implemented at the time of reporting and would not directly result in a reduction in the discharge of pollutants.
5. "Data Collection/Data Management." Data collection and management itself will not reduce pollutant discharges.

Of the watershed activities reported by the San Luis Rey River Watershed Copermittees in their WURMP annual report and Section 13267 responses, it appears that none of them will directly reduce the discharge of pollutants in urban runoff. While some useful monitoring was conducted, monitoring itself will not reduce pollutant discharges. Since the reported watershed activities would not reduce pollutant discharges, it was determined that they would not address and mitigate the high priority water quality problems in the watershed. As a result, a notice of violation was issued to the Copermittees within the watershed.

**Carlsbad Watershed** – Copermittees: City of Carlsbad, City of Encinitas, City of Escondido, City of Oceanside, City of San Marcos, City of Solana Beach, City of Vista, County of San Diego

The Carlsbad Watershed WURMP annual report and Section 13267 response identified the following watershed activities implemented by the Copermittees:

1. "Compile, review, and assess water quality data." This item of the WURMP annual report largely discusses monitoring activities. While monitoring studies are important, they do not constitute full compliance with watershed activity

requirements. On their own, studies will not reduce pollutant discharges. Implementation of watershed activities which will directly reduce pollutant discharges causing high priority water quality problems is needed.

2. "Pursue activities to reduce sediment loading to receiving water bodies." This item of the WURMP annual report describes a proposed study that may be developed some time in the future, as well as SUSMP implementation. The proposed study would not reduce the discharge of pollutants. SUSMP implementation is a jurisdictional requirement implemented without regard for differences in watersheds.
3. "Pursue activities to reduce bacteria loading to receiving water bodies." This item of the annual report largely discusses monitoring studies and data assessment. While monitoring studies are important, they do not constitute full compliance with watershed activity requirements. On their own, studies will not reduce pollutant discharges. Implementation of watershed activities which will directly reduce pollutant discharges causing high priority water quality problems is needed. In the annual report, there is also discussion of findings that irrigation runoff is a source of bacteria. However, no specific actions to address this source of bacteria is proposed.
4. "Implement programs to reduce Diazinon and other pesticides in the watershed." This item of the WURMP annual report describes an unsuccessful monitoring study. While monitoring studies are important, they do not constitute full compliance with watershed activity requirements. On their own, studies will not reduce pollutant discharges. Implementation of activities which will directly reduce pollutant discharges causing high priority water quality problems is needed.

Of the watershed activities reported by the Carlsbad Watershed Copermittees in their WURMP annual report and Section 13267 responses, it appears that none of them will directly reduce the discharge of pollutants in urban runoff. While some useful monitoring was conducted, monitoring itself will not reduce pollutant discharges. Since the reported watershed activities would not reduce pollutant discharges, it was determined that they would not address and mitigate the high priority water quality problems in the watershed. As a result, a notice of violation was issued to the Copermittees within the watershed.

**San Dieguito Watershed** – Copermittees: City of Del Mar, City of Escondido, City of Poway, City of San Diego, City of Solana Beach, County of San Diego

The San Dieguito Watershed WURMP annual report response identified the following activities implemented by the Copermittees:

1. "Data Collection and Analysis." No data collection and analysis specific to the watershed is reported. Instead, the report refers to the Watershed Assessment

Framework, a regional effort implemented by Copermittees in all watersheds. Regardless, data collection and analysis itself will not reduce pollutant discharges.

2. "Erosion Control Measures." This is largely a reformatting of an activity implemented by the Copermittees on a jurisdictional basis, without regard for watershed issues. However, this item also describes measures taken to address erosion resulting from wildfires. Ongoing implementation of a City of San Diego erosion control ordinance which was adopted prior to the issuance of the Permit is also discussed. While these activities are important, erosion control measures typically address sediment, which is not a high priority water quality problem within this watershed. It is unclear how erosion control measures would impact bacteria and total dissolved solids, the high priority water quality problems identified by the Copermittees.
3. "San Dieguito Watershed Stewardship Initiative." This is a planning activity; planning activities are required under another section of the permit. The reporting on this activity did not list implementation of any activities which would reduce pollutant discharges.
4. "Other Watershed Collaboration Activities." It is reported that on a few occasions, the City of Del Mar has contacted the City of Solana Beach to notify them of a potential violation within their jurisdiction. It is not reported whether any of these efforts resulted in abatement of a pollutant source or reduction in pollutant discharges related to high priority water quality problems within the watershed. While such coordination is commendable, these "few occasions" of coordination are unlikely to have a significant impact on the watershed's high priority water quality problems.

In addition to the annual report, the Copermittees' Section 13267 response includes the following information on activities conducted and planned activities for the current permit cycle:

5. "Develop a meeting schedule and work plan." This was not implemented at the time of reporting and will not directly reduce pollutant discharges causing high priority water quality problems.
6. "Re-assess overall watershed organization." This was not implemented at the time of reporting and will not directly reduce pollutant discharges causing high priority water quality problems.
7. "Continue participation in San Dieguito Watershed Initiative effort." See San Dieguito Watershed item no. 3 above. This is a planning activity required under another section of the permit. Participation itself will not directly reduce pollutant discharges causing high priority water quality problems; implementation is also needed.

8. "Review existing water quality data." This was not implemented at the time of reporting and will not directly reduce pollutant discharges causing high priority water quality problems.
9. "Re-examine and prioritize/validate pollutants of concern." This was not implemented at the time of reporting and will not directly reduce pollutant discharges causing high priority water quality problems.
10. "Consider potential/likely sources of pollutants." This was not implemented at the time of reporting and will not directly reduce pollutant discharges causing high priority water quality problems.
11. "Develop pollutant-focused water quality activities." This was not implemented at the time of reporting. Note that only development of solutions and activities is proposed – implementation is not mentioned. Development of solutions and activities itself will not directly reduce pollutant discharges causing high priority water quality problems; implementation is also needed.
12. "Develop a watershed-based education program outline." This is an education activity required under another section of the permit.
13. "Determine the feasibility of combining common watershed efforts with the Penasquitos Watershed Copermittees." This was not implemented at the time of reporting and will not directly reduce pollutant discharges causing high priority water quality problems.

Of the watershed activities reported by the San Dieguito Watershed Copermittees in their WURMP annual report and Section 13267 responses, only Item nos. 2 and 4 could directly reduce the discharge of pollutants. However, Item no. 2 targets pollutants other than the pollutants which are causing the high priority water quality problems within the watershed. Moreover, Item no. 4 is very limited in its location and scope and is unlikely to significantly reduce pollutant discharges. For these reasons, it was determined that the reported watershed activities would not address and mitigate the high priority water quality problems in the watershed. As a result, a notice of violation was issued to the Copermittees within the watershed.

**Penasquitos Watershed – Copermittees:** City of Del Mar, City of Poway, City of San Diego, County of San Diego

The Penasquitos Watershed WURMP annual report identified the following activities implemented by the Copermittees:

1. "Data Collection and Analysis." No data collection and analysis specific to the watershed is reported. Instead, the report refers to a regional effort implemented by the Copermittees in all watersheds. Regardless, data collection and analysis itself will not reduce pollutant discharges.

2. "Erosion Control Measures." This is largely a reformatting of an activity implemented by the Copermittees on a jurisdictional basis, without regard for watershed issues. However, this item also discusses measures taken by the City of Poway to address erosion resulting from wildfires. Ongoing implementation of a City of San Diego erosion control ordinance which was adopted prior to the issuance of the Permit is also discussed. Only the basic jurisdictional-level erosion control is mentioned for the County of San Diego and City of Del Mar.
3. "Los Penasquitos Watershed Management Plan." This is a planning activity; planning activities are required under another section of the permit. The reporting on this activity did not list implementation of any activities which would reduce pollutant discharges.

In addition to the annual report, the Copermittees' Section 13267 response includes the following information on activities conducted and planned activities for the current permit cycle:

4. "Develop a meeting schedule and work plan." This was not implemented at the time of reporting and will not directly reduce pollutant discharges causing high priority water quality problems.
5. "Re-assess overall watershed organization." This was not implemented at the time of reporting and will not directly reduce pollutant discharges causing high priority water quality problems.
6. "Continue participation in Penasquitos Watershed Management Plan effort." See Penasquitos Watershed Item no. 3 above. This is a planning activity required under another section of the permit. Participation itself will not directly reduce pollutant discharges causing high priority water quality problems; implementation is also needed.
7. "Review existing water quality data." This was not implemented at the time of reporting and will not directly reduce pollutant discharges causing high priority water quality problems.
8. "Re-examine and prioritize/validate pollutants of concern." This was not implemented at the time of reporting and will not directly reduce pollutant discharges causing high priority water quality problems.
9. "Consider potential/likely sources of pollutants." This was not implemented at the time of reporting and will not directly reduce pollutant discharges causing high priority water quality problems.
10. "Develop pollutant-focused water quality activities." This was not implemented at the time of reporting. Note that only development of solutions and activities is

proposed – implementation is not mentioned. Development of solutions and activities itself will not directly reduce pollutant discharges causing high priority water quality problems; implementation is also needed.

11. “Develop a watershed-based education program outline.” This is an education activity required under another section of the permit.
12. “Determine the feasibility of combining common watershed efforts with the San Dieguito Watershed Copermittees.” This was not implemented at the time of reporting and will not directly reduce pollutant discharges causing high priority water quality problems.

Of the watershed activities reported by the Penasquitos Watershed Copermittees in their WURMP annual report and Section 13267 responses, only Item no. 2 could directly reduce the discharge of pollutants. However, Item no. 2 only reports watershed activities of two of the four Copermittees in the watershed. Moreover, Item no. 2 only addresses one of the high priority water quality problems in the watershed – sediment. Bacteria, the other high priority water quality problem in the watershed, is not directly addressed by any of the water quality activities reported by the Copermittees. Since it was reported that only two of the Copermittees are implementing watershed water quality activities which address only one of the high priority water quality problems in the watershed, it was determined that the Penasquitos Watershed Copermittees were in violation of the Permit.

#### **Mission Bay and La Jolla Watersheds – Copermittee: City of San Diego**

A Notice of Violation was not issued for this watershed, due to the implementation of several projects which are likely to reduce the discharge of pollutants causing high priority water quality problems during this permit cycle, including the completed construction of eighteen new diversion facilities in March 2005.

#### **San Diego River Watershed – Copermittees: City of El Cajon, City of La Mesa, City of San Diego, City of Santee, County of San Diego**

See previous October 6, 2005 report: “Review of Notices of Violation Issued to the San Diego County Copermittees for Watershed Urban Runoff Management Program Implementation.”

#### **San Diego Bay Watershed – Copermittees: City of Chula Vista, City of Coronado, City of Imperial Beach, City of La Mesa, City of Lemon Grove, City of National City, City of San Diego, County of San Diego, San Diego Unified Port District, San Diego County Regional Airport Authority**

The San Diego Bay Watershed WURMP annual report and Section 13267 response identified the following activities implemented by the Copermittees:

1. "Bacteria Source Investigation Study." While studies to identify sources of pollutant discharges are important, they do not constitute full compliance with watershed activity requirements. On their own, studies will not reduce pollutant discharges. Implementation of watershed activities which will directly reduce pollutant discharges causing high priority water quality problems is also needed.
2. "Data Collection." Data collection itself will not reduce pollutant discharges.
3. "Regional IPM [Integrated Pest Management] Campaign – PRISM [Pesticide Research and Investigation of Source and Mitigation] Grant." The activities described under this category are education and monitoring. Education efforts are required under another section of the permit, while monitoring itself will not directly reduce pollutant discharges.
4. "Source Water Guidelines." The source water guidelines appear to still be in the development stage. They are being developed for application region-wide, without regard for differences in watersheds. In addition, the guidelines are described in the annual report as a planning effort; planning efforts are required by another section of the permit.
5. "Chollas Creek Enhancement Plan." This is a long-term project that has not yet begun and likely will not reduce pollutants during the current permit cycle. Once constructed, however, it will increase assimilative capacity of some pollutants of Chollas Creek.
6. "Regional Harbor Monitoring Program." While monitoring is important, it does not constitute full compliance with watershed activity requirements. On its own, monitoring will not reduce pollutant discharges. Implementation of watershed activities which will directly reduce pollutant discharges causing high priority water quality problems is also needed.
7. "Downtown Piers, Switzer Creek, Grape Street TMDL." The activities described for this item were monitoring activities. While monitoring is important, it does not constitute full compliance with watershed activity requirements. On its own, monitoring will not reduce pollutant discharges. Implementation of watershed activities which will directly reduce pollutant discharges causing high priority water quality problems is also needed.
8. "Chollas and Paleta TMDLs." The activities described in this item were data analysis and reporting. As with monitoring, these activities are important, but will not directly reduce the discharge of pollutants.
9. "Shelter Island Yacht Basin Copper TMDL." The activities described in this item included review of draft documents, attending public workshops and board meetings, and providing comments on draft reports. These activities will not



directly reduce the discharge of pollutants.

10. "Jurisdictional Programs." This item discusses activities implemented on a jurisdictional basis, without regard for differences in watersheds. Activities implemented in compliance with jurisdictional requirements are a baseline level of effort which does not change based on watershed conditions; watershed activities should differ from jurisdictional activities by providing additional focus on high priority water quality problems within a watershed.

Of the watershed activities reported by the San Diego Bay Watershed Copermittees in their WURMP annual report and Section 13267 responses, only Item nos. 5 and 10 could directly reduce the discharge of pollutants. Item no. 5, however, is unlikely to reduce the discharge of pollutants during this permit cycle. Moreover, Item no. 10 discusses activities implemented on a jurisdictional basis, without regard for differences in watersheds. For these reasons, it was determined that the reported water quality activities were not watershed-based or would not address and mitigate the high priority water quality problems in the watershed during the permit cycle. As a result, a notice of violation was issued to the Copermittees within the watershed.

**Tijuana River Watershed – Copermittees: City of Imperial Beach, City of San Diego, County of San Diego**

1. "Data Collection." Data collection itself will not reduce pollutant discharges.
2. "San Diego Coastal Ocean Observing System Project." This is essentially a monitoring project which will not reduce pollutant discharges. While monitoring is important, it does not constitute full compliance with watershed activity requirements. On its own, monitoring will not reduce pollutant discharges. Implementation of watershed activities which will directly reduce pollutant discharges causing high priority water quality problems is also needed.
3. "Integrated Pest Management Campaign." This is an educational activity required under another section of the permit.
4. "Toxicity Identification Evaluation." While studies to identify causes of toxicity are important, they will not reduce pollutant discharges. Implementation of activities which will directly reduce pollutant discharges causing high priority water quality problems is also needed.
5. "Promote Trans-Border Collaboration." While trans-border collaboration is important, the activities reported are planning activities. None of these activities reflect a reduction in pollutant discharges in urban runoff.
6. "Tijuana River Watershed Invasive Species Removal Project." While this is a commendable project, it will not reduce the discharge of pollutants in urban

runoff. Moreover, it will not be implemented during this permit cycle.

7. "Goat Canyon Enhancement Project." This is not a Copermittee project.

Of the watershed activities reported by the Tijuana River Watershed Copermittees in their WURMP annual report and Section 13267 responses, it appears that none of them will directly reduce the discharge of pollutants in urban runoff. For this reason, it was determined that the reported water quality activities would not address and mitigate the high priority water quality problems in the watershed. As a result, a notice of violation was issued to the Copermittees within the watershed.

### NOV Contents

NOVs are not codified in the California Water Code. Therefore, they are considered informal enforcement actions. As an informal enforcement action, there is little guidance available regarding what specific information should be included in a NOV. The State Water Resource Control Board's Enforcement Policy states the following on informal enforcement and NOVs:

**Informal Enforcement Actions:** An informal enforcement action is any enforcement action taken by SWRCB or RWQCB staff that is not defined in statute. An informal enforcement action can include any form of communication (verbal, written, or electronic) between SWRCB and/or RWQCB staff and a discharger about a violation or potential violation. These actions may, in some circumstances, be petitioned to the RWQCB or the RWQCB Executive Officer but cannot be directly petitioned to the SWRCB. The purpose of an informal enforcement action is to quickly bring a violation to the discharger's attention and to give the discharger an opportunity to return to compliance as soon as possible. The RWQCB may take formal enforcement action in place of, or in addition to, informal enforcement actions. Continued noncompliance is considered a priority violation and should trigger formal enforcement action. [...]

**Notice of Violation (NOV):** The NOV letter is the highest level of informal enforcement action. An NOV should be signed by the RWQCB Executive Officer or designated staff and should be addressed and mailed to the discharger(s) by certified mail. In cases where the discharger has requested that their consultant be notified of RWQCB actions, the consultant should also receive a copy of the NOV. The NOV letter should include a description of specific violations, a summary of potential enforcement options available for non-compliance (including the potential daily or per gallon maximum Administrative Civil Liability (ACL) available), and, when appropriate, a request for a written response by a specified date. The summary of potential enforcement options shall include appropriate citations to the California Water Code and should specify that the RWQCB reserves the right to take any enforcement action authorized by law. Notice of violations and enforcement letters must not include language that

excuses the violation or that modifies a compliance date in WDRs or other orders issued by the State or RWQCB.

Based on a review of the NOV's issued, it appears that while the NOV's could have included more detail, they do contain the necessary information as outlined by the Enforcement Policy.

### **Conclusion**

Based on a review of the Copermittees' WURMP Annual Reports and Section 13267 responses, it has been determined that the Copermittees reported very few watershed activities which would reduce the discharge of pollutants. For this reason, the issuance of the WURMP NOV's to the Copermittees was warranted. Regional Board staff plans to continue to work with the Copermittees to improve the development and implementation of their WURMPs.

**Supporting Document No. 2  
for  
Agenda Item No. 9**

**November 9, 2005 Regional Board Meeting**

The October 6, 2005 report titled "Review of Notices of Violation Issued to the San Diego Copermittees for Urban Runoff Management Program Implementation" is available as the attachment for Item B-13 of the October 12, 2005 Executive Officer Report. The entire October 12, 2005 Executive Officer Report is available for download at: [http://www.waterboards.ca.gov/sandiego/eo\\_report/eoreport.html](http://www.waterboards.ca.gov/sandiego/eo_report/eoreport.html).

**Supporting Document No. 3  
for  
Agenda Item No. 9**

**November 9, 2005 Regional Board Meeting**



# California Regional Water Quality Control Board

## San Diego Region

Alan C. Lloyd, Ph.D.  
Secretary for  
Environmental  
Protection

Over 50 Years Serving San Diego, Orange, and Riverside Counties  
Recipient of the 2004 Environmental Award for Outstanding Achievement from USEPA  
9174 Sky Park Court, Suite 100, San Diego, California 92123  
Phone (858) 467-2952 • FAX (858) 571-6972  
<http://www.waterboards.ca.gov>



Arnold Schwarzenegger  
Governor

October 28, 2005

In reply refer to:  
WPS:10-5000.02:hammp

Dear San Diego Municipal Storm Water Copermittee (Distribution List Attached):

**Subject: Watershed Urban Runoff Management Plans**

In June 2005, the San Diego Regional Water Quality Control Board (Regional Board) issued Notices of Violation (NOVs) to the San Diego County Municipal Storm Water Copermittees (Copermittees) for failure to implement adequate Watershed Urban Runoff Management Programs (WURMPs). Following issuance of the NOVs, the majority of the Copermittees requested that the NOVs be rescinded.

In response to these requests, the Regional Board crafted an October 6, 2005 report addressing the issue titled "Review of Notices of Violation Issued to the San Diego County Copermittees for Watershed Urban Runoff Management Program Implementation." This report was made available on the Regional Board's website and provided to the Copermittees' storm water staff by email.

The October 6, 2005 report was also provided to the Regional Board members, who informally discussed the issue at the October 12, 2005 Regional Board meeting. As a result of this discussion, the Regional Board requested that the issue appear on its agenda for a future Regional Board meeting.

The issue of the WURMP NOVs has been placed on the November 9, 2005 Regional Board meeting agenda. The meeting begins at 9:00 am and will be held in the Regional Board Meeting Room, 9174 Sky Park Court, San Diego, California. Opportunity for public comment on the issuance of the WURMP NOVs will be provided. An agenda for the November 9, 2005 Regional Board meeting is available at:

<http://www.waterboards.ca.gov/sandiego/rb9board/meetings.html>.

Attached to this letter is the Executive Officer Summary Report for the WURMP NOV agenda item. In addition, the October 27, 2005 "Supplemental Report for Review of Notices of Violation Issued to the San Diego County Copermittees for Watershed Urban Runoff Management Program Implementation" is also attached.

The heading portion of this letter includes a Regional Board code number noted after "In reply refer to." In order to assist us in the processing of your correspondence please include this code

*California Environmental Protection Agency*

Recycled Paper

number in the heading or subject line portion of all correspondence and reports to the Regional Board pertaining to this matter.

Thank you for you efforts to address urban runoff water quality problems on a watershed basis. Please call Phil Hammer at 858-627-3988 if you have any questions regarding this letter.

Respectfully,



John H. Robertus  
Executive Officer  
San Diego Regional Water Quality Control Board



**Distribution List**

San Diego County Regional Airport Authority  
Richard Gilb  
Environmental Affairs Department  
P.O. Box 82776  
San Diego, CA 92138-2776

City of Carlsbad  
Jayne Strommer  
1635 Faraday Avenue  
Carlsbad, CA 92008

City of Chula Vista  
Khosro Aminpour  
1800 Maxwell Road  
Chula Vista, CA 91911

City of Coronado  
Mr. Scott Huth  
Director of Public Services  
1395 First Street  
Coronado, CA 92118-1502

City of Del Mar  
Rosanna LaCarra  
1050 Camino Del Mar  
Del Mar, CA 92014

City of El Cajon  
John Phillips  
200 East Main Street  
El Cajon, CA 92020-3912

City of Escondido  
Cheryl Filar  
201 North Broadway  
Escondido, CA 92025

City of Encinitas  
Kathy Weldon  
505 South Vulcan Ave  
Encinitas, CA 92024-3633

City of Imperial Beach  
Hank Levien  
825 Imperial Beach Blvd.  
Imperial Beach, CA 91932

City of La Mesa  
Tameed Hashemian  
30 Allison Avenue  
La Mesa, CA 91941

City of Lemon Grove  
Cora Long  
3232 Main Street  
Lemon Grove, CA 91945

National City  
Din Daneshfar  
1243 National City Blvd  
National City, CA 91950-4397

City of Oceanside  
Mo Lahsaie  
300 North Coast Highway  
Oceanside, CA 92054

City of Poway  
Danis Bechter  
13325V Civic Center Drive  
Poway, CA 92064

City of San Diego  
Chris Zirkle  
Storm Water Pollution Prevention Program  
1970 B Street, MS 27A  
San Diego, CA 92102

City of Santee  
Rob Zaino  
10601 Magnolia Avenue  
Santee, CA 92071-1266

San Diego Unified Port District  
Karen Helyer  
P.O. Box 120488  
San Diego, CA 92112

City of San Marcos  
Jasen Boyens  
201 Mata Way  
San Marcos, CA 92069

County of San Diego  
Jon Van Rhyn  
9325 Hazard Way  
San Diego, CA 92123

City of Solana Beach  
Danny King  
635 South Highway 101  
Solana Beach, CA 92075

City of Vista  
Linda Isakson  
1165 East Taylor Street  
Vista, CA 92084

Ms. Thella F. Bowens  
Executive Director  
San Diego County Regional Airport Authority  
P.O. Box 82776  
San Diego, CA 92138-2776

Mr. Dave Rowlands  
City Manager  
City of Chula Vista  
276 Fourth Avenue  
Chula Vista, CA 91910

Mr. P. Lamont Ewell  
City Manager  
City of San Diego  
202 C Street – MS 9A  
San Diego, CA 92101

Mr. Mark Ochendusko  
City Manager  
City of Coronado  
1825 Strand Way  
Coronado, California 92118

Mr. Walt Ekard  
Chief Administrative Officer  
County of San Diego  
1600 Pacific Highway, Room 209  
San Diego, CA 92101

Ms. Lauraine Brekke-Esparza  
City Manager  
City of Del Mar  
1050 Camino Del Mar  
Del Mar, CA 92014

Ms. Kathi Henry  
City Manager  
City of El Cajon  
200 E. Main Street  
El Cajon, CA 92020

Mr. Clay Phillips  
City Manager  
City of Escondido  
City Hall, Second Floor  
201 North Broadway  
Escondido, CA 92025

Mr. Gary Brown  
City Manager  
City of Imperial Beach  
825 Imperial Beach Blvd.  
Imperial Beach, CA 91932

Ms. Sandra L. Kerl  
City Manager  
City of La Mesa  
8130 Allison Avenue  
La Mesa, CA 91941

Mr. Graham Mitchell  
City Manager  
City of Lemon Grove  
3232 Main Street  
Lemon Grove, California 91945

Mr. Chris Zapata  
City Manager  
City of National City  
1243 National City Boulevard  
National City, CA 91950-4397

Mr. Bruce Hollingsworth  
Executive Director  
San Diego Unified Port District  
3165 Pacific Highway  
San Diego, CA 92101-1128

Mr. James Bowersox  
City Manager  
City of Poway  
P.O. Box 789  
13325 Civic Center Drive  
Poway, CA 92074-0789

Mr. Keith Till  
City Manager  
City of Santee  
10601 Magnolia Avenue  
Santee, CA 92071

Mr. Barry Johnson  
City Manager  
City of Solana Beach  
635 South Highway 101  
Solana Beach CA 92075

Mr. Ray Patchett  
City Manager  
City of Carlsbad  
1635 Faraday Avenue  
Carlsbad, CA 92008

Mr. Kerry L. Miller  
City Manager  
City of Encinitas  
505 S. Vulcan Avenue  
Encinitas, CA 92024

City Manager  
City of Oceanside  
300 N. Coast Hwy  
Oceanside, CA 92054

City Manager  
City of San Marcos  
1 Civic Center Drive  
San Marcos, CA 92069

Ms. Rita Geldert  
City Manager  
City of Vista  
600 Eucalyptus Avenue  
Vista CA 92084

**Supporting Document No. 4  
for  
Agenda Item No. 9**

**November 9, 2005 Regional Board Meeting**



## CITY OF SOLANA BEACH

635 SOUTH HIGHWAY 101 • SOLANA BEACH • CALIFORNIA 92075-2215 • (858) 720-2400  
www.ci.solana-beach.ca.us

FAX (858) 792-6513 / (858) 755-1782

October 6, 2005

Mr. John H. Robertus  
Executive Officer  
San Diego Regional Water Quality Control Board  
9174 Sky Park Court  
San Diego, CA 92123-4340

Re: Watershed Notice of Violation

Dear Mr. Robertus:

On June 21, 2005, the City of Solana Beach received a Notice Of Violation (NOV) from the San Diego Regional Water Quality Control Board (RWQCB). The purpose of this letter is to formally convey the City of Solana Beach's objection to the issuance of the NOV. The City has waited to register its objections in anticipation that you would rescind the NOV due to its lack of specificity and improper timing. However, after discussions with RWQCB staff, including your appearance at the City/County Managers' Association meeting, it is apparent that the NOV will not be rescinded. The City wishes that you reconsider the City's objections, address the concerns raised in this letter, and withdraw the NOV.

I wish to reiterate the City's commitment to watershed management, and being part of a regional solution towards reducing pollutants in the region's waterways, bays and ocean. The City has made tremendous progress in the last few years in compliance with these unfunded mandates imposed on local governments. I believe this progress is well documented in the City's last annual report, and would be apparent through a visit to City Hall and speaking with City staff.

The NOV is unfortunate in that it highlights the lack of cooperation between regional board staff and the local governments with whom the regional board should be partnering to bring about a regional clean water solution. The issuance of the NOV also highlights a lack of understanding at your Agency level of the practical and funding restraints placed on local governments in attempting to deal with problems that extend beyond their own borders.

Rec'd OCT 12 A 10:30  
OFFICE OF THE  
CITY CLERK

### **NOV Lacks Legal Specificity**

The City of Solana Beach believes that the NOV lacks the specificity needed to put the City on notice of its alleged deficiencies. The NOV fails to enumerate any specific violation of the requirements the Permit. Normally, a Notice of Violation is an administrative document, which notifies a person or organization of a specific violation. An NOV typically specifies what steps are needed to bring the person or organization back into compliance. This NOV does neither. The City of Solana Beach was not provided with any guidance as to what steps must be taken in the future to meet Permit requirements.

The NOV was also issued prematurely. It was our understanding that it addresses general concerns verbally raised at an October 2004 staff meeting with co-permittee representatives. Since the 2004 Annual WURMP has not even been formally reviewed, these generalized concerns are premature. Further, the language of the NOV does not specify how to translate vague concerns into a plan of action for this co-permittee.

There is little question that the lack of specificity and guidance make the NOV a legally unenforceable document. On a more practical level, furthermore, its issuance indicates that conditions remain which prevent a cooperative relationship between regional board staff and local governments required to bring about regional solutions.

### **Lack of Inter-Governmental Cooperation**

The issuance of the NOV with no warning highlights a basic problem between the regional board staff and all co-permittees, including Solana Beach. Normally, it is best for all involved to cooperate when attempting to achieve a common goal. The issuance of this NOV orders the City of Solana Beach to meet unspecified goals, not within its jurisdictional limits. When staffs of various San Diego cities sought guidance from the regional board staff as to how to meet this requirement, one city representative was told that its city was in violation as long there is pollution. Regional board staff has routinely failed to listen to City concerns regarding the manner and methods of reaching the goals of higher water quality, especially given the legal and practical constraints placed on the co-permittees.

For the past several years, the City of Solana Beach, along with all other co-permittees have made painful choices to implement storm water programs within their boundaries. Fees and charges have been raised against both developers and the general citizenry. Solana Beach has had to change its funding priorities to shift general fund revenues from other programs to meet the requirements of the permit. Specifically, this has meant a direct reduction in general fund related services to fund portions of the storm water program that cannot be passed on through fees or charges.

The issuance of the non-specific watershed NOV raises the specter of significant increased costs for programs outside the boundaries of the City. This prospect is problematic. The fees charged by Solana Beach to help defray the cost of its storm water program cannot be used to fund extraterritorial programs. It is fundamental that fees may only be raised to defray the costs with an appropriate nexus to the burdens placed on the storm water system by the ratepayer. After reviewing a variety of fee structures throughout Southern California, we have been unable to find a fee method which appropriately charges local residents and

developers for extra-territorial pollution problems. We are also unaware of any federal requirement which forces a jurisdiction to pay for clean up efforts caused by factors outside of its own jurisdictional boundaries. This forces Solana Beach into a dilemma. It must choose one of two paths. One option is to pay for the cost of expanded watershed programs through its general fund and continue to reduce services such as police and fire protection. The other option would be to seek cost reimbursement for this unfunded state mandate through the states mandates process and under Proposition 1A.

### Co-Permittee Efforts

The NOV also fails to recognize the efforts of co-permittees including Solana Beach. The co-permittees were told not to include efforts being undertaken by the City of Solana Beach under its JURMP. These efforts are included as an attachment to this letter (Attachment 1)

### Conclusion

Allowing the NOV to remain in place symbolizes many of the problems that exist between your Agency and the local co-permittees. It is clear that the regional board and its staff have difficulty understanding the legal and practical restraints placed upon cities in implementing these ever expanding requests. This latest NOV highlights how cities are asked to perform regional and statewide tasks by competing agencies of the state with little or no resources available to perform these tasks. We ask that the following steps be taken by you as the administrator of the San Diego Regional Water Quality Control Board.

1. Rescind the NOV;
2. Redirect the role of the RWQCB staff to that more of a regional leader to assist in watershed management; and
3. Establish a continuing dialogue between principal administrators of your agency and the cities that have been tasked with solving a national problem with local resources.

If you have any questions regarding any of the above-mentioned matters, please feel free to contact the undersigned.

Yours very truly,



Barry Johnson  
City Manager, City of Solana Beach

cc: Mayor, City of Solana Beach  
City Council, City of Solana Beach  
City Attorney, City of Solana Beach  
San Diego Regional Water Quality Control Board

## Attachment 1

Although watershed management is a new concept and implementation is not easily performed on a watershed basis, the City of Solana Beach has been operating successfully on a watershed basis for approximately three years. Over this period, the WURMP co-permittees have identified the high priority water quality problems for each watershed, identified the sources of those pollutants and developed a list of short and long-term activities to address those sources. This program has been adapted twice based on the RWQCB WURMP review letters, and the RWQCB 13267 Directive regarding the 2002-03 WURMP Annual Report, dated October 8, 2004. The primary changes were to create pollutant-specific activities that "address likely sources of water quality problems within the watershed", as outlined in Comment No. 1 of the 13267 Directive. As a result the City of Solana Beach realigned their water quality activities and added the following three pollutant-specific activities (Bacteria, Sediment, and Pesticides). A list of these activities (separated by watershed) follows and is organized to match Attachment 2 of the RWQCB's 13267 Directive Letter with the City's specific activity listed in *Italics*.

### **Bacteria:**

#### San Dieguito Watershed:

- "Daylight" underground storm water conveyance lines – *Steven's Creek, daylighted 500-feet of Steven's Creek, restoring a natural wetland area.*
- Construct wetlands or similar structural treatment best management practices – *City installed and maintains a low-flow diverter at Fletcher Cove (the most frequented beach access in the City).*
- Conduct a source identification study for an identified problem area – *Currently conducting a Special Investigation for bacteria at Seascape Sur Outfall. City is working with consultant MEC Weston on a special project to help determine the source of continuous bacteria problem at outfall.*
- Implement a BMP pilot project in an identified problem area – *City installed and maintains a catch basin insert at Seascape Sur.*
- Reduce non-storm water discharges that serve as a transport mechanism - encourage water conservation – *City partners with local non-profit group Solana Center to conduct workshops for water conservation (Less Toxic Yard & Garden Workshop). City also works with local water agency to promote water conservation.*
- Increase cleaning of storm water conveyance systems in problem areas, such as tidally influenced coastal storm drains which contain decomposing kelp – *City increases removal of kelp from beaches during summer months and inspects all catch basins in City on annual basis for cleaning.*
- Increase dry weather monitoring for bacterial indicators in suspected problem areas – *City inspects all catch basins (even private inlets in parking areas of adjacent commercial complex) located in surrounding areas of Seascape Sur.*
- Focus efforts in areas with documented REC-1 beneficial uses – *The City makes a conscientious effort to monitor and patrol all REC-1 areas throughout the City. Marine Safety staff patrol the beaches and report any unusual flow or odor coming from the beach outfalls, Public Works staff monitor and maintain the*

storm drain system and interact with residents if they detect a violation. Additionally, City staff monitor all outfalls (coastal and lagoon) and sample for bacterial indicators. Seascape Sur Outfall, known as a trouble spot in the City, is annually cleaned and sanitized and there is a catch basin insert installed directly upstream from the trouble pipe. The City has also participated in a bacteria source identification pilot program with MEC/WESTON to attempt to locate the source of the continual bacteria issues at the Outfall.

- Address homeless encampments – Public Works staff routinely removes encampments throughout City to reduce bacteria and ammonia levels.
- Address residential and commercial fertilizer/manure use and manure management – City does not have any commercial businesses involved with manure use. However, City does have active Household Hazardous Waste (HHW) Program that educates residents and businesses about proper disposal of fertilizers and subsidizes a highly successful program to assist residents with proper disposal of HHW.
- Set up additional "doggie bag" dispensers – Doggie bag dispensers are located and maintained along Sierra Avenue (adjacent to beach accesses). Bags are monitored on a weekly basis by Public Works Staff. Additionally, City projects are required to install stations and bags (i.e. recently completed Coastal Rail Trail project).
- Increase oversight of restaurant grease management – The City recently (September 21, 2004) adopted a grease trap ordinance that requires not only new and remodeled eating establishments to install a grease trap/interceptor, but also existing facilities. Grease traps/interceptors will be inspected on an annual basis, except in known problem areas that may be inspected more frequently to ensure proper maintenance.

#### Carlsbad Watershed:

- Construct wetlands or similar structural treatment best management practices – City split costs with developer on purchase and installation of CDS Unit adjacent to San Elijo Lagoon. City is responsible for long term maintenance. City also maintains a large desiltation basin adjacent to San Elijo Lagoon to reduce sediment loading in the environmentally sensitive area.
- Reduce non-storm water discharges that serve as a transport mechanism - encourage water conservation – City partners with local non-profit group Solana Center to conduct workshops for water conservation (Less Toxic Yard & Garden Workshop). City also works with local water agency to promote water conservation.
- Increase cleaning of storm water conveyance systems in problem areas, such as tidally influenced coastal storm drains which contain decomposing kelp – City increases removal of kelp from beaches during summer months and inspects all catch basins in City on annual basis for cleaning.
- Focus efforts in areas with documented REC-1 beneficial uses – The City makes a conscientious effort to monitor and patrol all REC-1 areas throughout the City. Marine Safety staff patrol the beaches and report any unusual flow or odor coming from the beach outfalls, Public Works staff monitor and maintain the storm drain system and interact with residents if they detect a violation.
- Address homeless encampments – City cooperates with County Parks and Recreation staff to remove encampments from San Elijo Lagoon. Public Works



*staff routinely removes encampments throughout City to reduce bacteria and ammonia levels.*

- Public Works staff routinely removes encampments throughout City to reduce bacteria and ammonia levels.*
- Address residential and commercial fertilizer/manure use and manure management – City does not have any commercial businesses involved with manure use. However, City does have active Household Hazardous Waste (HHW) Program that educates residents and businesses about proper disposal of fertilizers and subsidizes a highly successful program to assist residents with proper disposal of HHW.*
- Set up additional "doggie bag" dispensers – City projects are required to install stations and bags (i.e. recently completed Coastal Rail Trail project).*
- Increase oversight of restaurant grease management – The City recently (September 21, 2004) adopted a grease trap ordinance that requires not only new and remodeled eating establishments to install a grease trap/interceptor, but also existing facilities. Grease traps/interceptors will be inspected on an annual basis, except in known problem areas that may be inspected more frequently to ensure proper maintenance.*

#### **Sediment/Turbidity:**

##### San Dieguito Watershed:

- Conduct pre-construction meeting at all construction sites, notifying developers and contractors of sediment problems within the watershed – Engineering staff attends all pre-construction meetings to emphasize BMPs for erosion and sediment control. Staff inspects all construction sites, and educational materials developed all contain proper sediment/erosion control practices.*

##### Carlsbad Watershed:

- Conduct pre-construction meeting at all construction sites, notifying developers and contractors of sediment problems within the watershed – Engineering staff attends all pre-construction meetings to emphasize BMPs for erosion and sediment control. Staff inspects all construction sites, and educational materials developed all contain proper sediment/erosion control practices.*
- City maintains a large sediment basin on north side of City to prevent sediment from entering the San Elijo Lagoon.*

#### **Pesticides:**

##### San Dieguito Watershed:

- Develop and implement neighborhood pesticide collection events – City has extensive HHW Program that provides home pick-up of residential HHW for \$10 (City pays \$64 each pick-up) and it is free for elderly and homebound residents. HHW program also runs two facilities (Poway and Vista) where residents can bring HHW free of charge (City pays \$74 for disposal). Occasional regional collection events are held in conjunction with other North County cities.*
- Conduct Integrated Pesticide Management (IPM) training in the watershed – City partners with local non-profit organization Solana Center to develop educational materials and conduct IPM training within the City.*

- *City distributes HHW (including fertilizers/pesticides) brochures and Less Toxic Yard & Garden brochure to residents at City Hall and at public events (Fiesta Del Sol).*
- *City partners with Solana Center to run a booth at annual Fiesta Del Sol to educate residents on HHW issues and distribute educational materials.*

Carlsbad Watershed:

- *Develop and implement neighborhood pesticide collection events – City has extensive HHW Program that provides home pick-up of residential HHW for \$10 (City pays \$64 each pick-up) and it is free for elderly and homebound residents. HHW program also runs two facilities (Poway and Vista) where residents can bring HHW free of charge (City pays \$74 for disposal). Occasional regional collection events are held in conjunction with other North County cities.*
- *Conduct Integrated Pesticide Management (IPM) training in the watershed – City partners with local non-profit organization Solana Center to develop educational materials and conduct IPM training within the City.*
- *City distributes HHW (including fertilizers/pesticides) brochures and Less Toxic Yard & Garden brochure to residents at City Hall and at public events (Fiesta Del Sol).*
- *City partners with Solana Center to run a booth at annual Fiesta Del Sol to educate residents on HHW issues and distribute educational materials.*

**Coordination Activities:**

Carlsbad Watershed:

- *Conduct meetings among WURMP Copermittees to exchange ideas of how to address sources of pollutants of concern in the watershed and evaluate the effectiveness of actions – Attended, and actively participated in, all Carlsbad WURMP Workgroup meetings.*
- *Attended, and actively participated in, quarterly Escondido Creek Watershed Alliance (ECWA) meetings with local council members.*
- *Received information and meeting summaries from our Carlsbad WURMP consultant representing the Carlsbad WURMP Workgroup at the monthly meetings of the Carlsbad Watershed Network (CWN).*

Based on these activities, we believe that we have complied with Section J.2.d of Order 2001-01. The City believes that we have performed watershed activities successfully and have made good progress towards implementing pollutant-specific activities.



# CITY OF LEMON GROVE

Office of the City Manager

"Best Climate On Earth"

*include in NOV for mtg*  
*page*

October 10, 2005

Mr. John H. Robertus  
Executive Officer  
San Diego Regional Water Quality Control Board  
9174 Sky Park Court  
San Diego, CA 92123-4340

SUBJECT: Watershed Notice of Violation (June 17, 2005)

Dear Mr. Robertus:

On June 17, 2005, the City of Lemon Grove received a Notice of Violation (NOV) from the San Diego Regional Water Quality Control Board (RWQCB). The purpose of this letter is to formally convey the City of Lemon Grove's objection to the issuance of the NOV. The City has waited to register its objections in anticipation that you would rescind the NOV due to its lack of specificity and improper timing. However, after discussions with RWQCB staff, including your appearance at the City/County Manager's Association meeting, it is apparent that the NOV will not be rescinded. The City wishes that you reconsider the City's objections, address the concerns raised in this letter, and withdraw the NOV.

I wish to reiterate the City's commitment to watershed management, and being part of a regional solution towards reducing pollutants in the region's waterways, bays and ocean. The City has made tremendous progress in the last few years in compliance with these unfunded mandates imposed on local governments. I believe this progress is well documented in the City's last annual report and the annual watershed report.

The issuance of the NOV is unfortunate in that it highlights the lack of cooperation between regional board staff and the local governments with whom the regional board and its staff should be partnering to bring about a regional clean water solution. The NOV also highlights regional board staff's lack of understanding of the practical and funding restraints placed on local governments in attempting to deal with problems that extend beyond their own borders.

## NOV Lacks Legal Specificity

The City of Lemon Grove believes that the NOV lacks the specificity needed to put the City on notice of its alleged deficiencies. The NOV fails to enumerate any specific violation of the requirements in the Permit. Normally, a Notice of Violation is an administrative document which notifies a person or organization of a specific violation. An NOV typically specifies what steps are needed to bring the person or organization back into compliance. This NOV does neither. The City of Lemon Grove was not provided with any written guidance as to what steps must be taken in the future to meet Permit requirements.



The NOV was also issued prematurely. It was our understanding that it addresses general concerns verbally raised at an October 2004 staff meeting with co-permittee representatives. Since neither the 2004 Annual WURMP nor the 2004 Annual JURMP have been formally reviewed, these generalized concerns are premature. Further, the vague language of the NOV does not translate into a plan of action.

There is little question that the lack of specificity and guidance make the NOV a legally unenforceable document. On a more practical level, furthermore, its issuance indicates that conditions remain which prevent a cooperative relationship between regional board staff and local governments required to bring about regional solutions.

### **Lack of Inter-Governmental Cooperation**

The issuance of the NOV with no warning highlights a basic problem between the regional board staff and co-permittees, including Lemon Grove. Normally, it is best for all involved to cooperate when attempting to achieve a common goal. The issuance of this NOV orders the City of Lemon Grove to meet unspecified goals, not within its jurisdictional limits. When staffs of various San Diego cities sought guidance from the regional board staff as to how to meet this requirement, one city representative was told that its city was in violation as long there is pollution. Regional board staff has routinely failed to listen to city concerns regarding the manner and methods of reaching the goals of higher water quality, especially given the legal and practical constraints placed on the co-permittees.

For the past several years, the City of Lemon Grove, along with other co-permittees have made painful choices to implement storm water programs within their boundaries. Fees and charges have been raised against both developers and the general citizenry. Lemon Grove has had to change its funding priorities to shift general fund revenues from other programs to meet the requirements of the permit. Specifically, this has meant a direct reduction in police services to fund portions of the storm water program that cannot be passed on through fees or charges.

The issuance of the non-specific watershed NOV raises the specter of significant increased costs for programs outside the boundaries of the City. This prospect is problematic. The fees charged by Lemon Grove to help defray the cost of its storm water program cannot be used to fund extraterritorial programs. It is fundamental that fees may only be raised to defray the costs with an appropriate nexus to the burdens placed on the storm water system by the ratepayer. After reviewing a variety of fee structures throughout Southern California, we have been unable to find a fee method which appropriately charges local residents and developers for extra-territorial pollution problems. We are also unaware of any federal requirement which forces a jurisdiction to pay for clean up efforts caused by factors outside of its own jurisdictional boundaries. This forces Lemon Grove into a dilemma. It must choose one of two paths. One option is to pay for the cost of expanded watershed programs through its general fund and continue to reduce services such as police and fire protection. The other option would be to seek cost reimbursement for this unfunded state mandate through the State's mandates process and under Proposition 1A.

The NOV also fails to recognize the efforts of co-permittees including Lemon Grove. The co-permittees were told not to include efforts being undertaken by the City of Lemon Grove under its JURMP. Efforts will continue to be documented in the various annual reports mandated by the Permit.

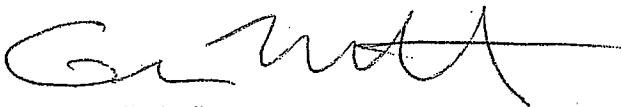
### Conclusion

Allowing the NOV to remain in place symbolizes many of the problems that exist between the regional board and the local co-permittees. It is clear that the regional board's staff has difficulty understanding the legal and practical restraints placed upon cities in implementing these ever expanding requests. This latest NOV highlights how cities are asked to perform regional and statewide tasks by competing agencies of the State with little or no resources available to perform these tasks. We ask that the following steps be taken by you as the administrator of the San Diego Regional Water Quality Control Board.

1. Rescind the NOV;
2. Redirect the role of the RWQCB staff to that of a regional leader to assist in watershed management; and
3. Establish a continuing dialogue between principal administrators of your agency and the cities that have been tasked with solving a national problem with local resources.

If you have any questions regarding any of the above-mentioned matters, please feel free to contact the undersigned.

Sincerely,



Graham Mitchell  
City Manager, City of Lemon Grove

cc: Mayor, City of Lemon Grove  
City Council, City of Lemon Grove  
City Attorney, City of Lemon Grove  
San Diego Regional Water Quality Control Board



THE CITY OF SAN DIEGO

PH 10/26/05  
Ls file

October 19, 2005

Mr. John Robertus  
Executive Officer  
San Diego Regional Water Quality Control Board  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123

2005 OCT 20 A 10:57

San Diego Regional Water Quality Control Board

Subject: Notice of Violation No. R9-2005-0194 (WDID 9000000510) for the San Dieguito, Peñasquitos, San Diego River, San Diego Bay and Tijuana River Watershed Urban Runoff Management Programs (WURMPs)

Dear Mr. Robertus:

This letter is in response to the June 17, 2005 Notice of Violation (NOV) sent by Michael McCann of your staff. The NOV states that the City failed to implement adequate WURMP programs. Specifically, the NOV states that the City failed to comply with section J.2.d of the Municipal Storm Water Permit (Municipal Permit) by not implementing activities in the San Dieguito, Peñasquitos, San Diego River, San Diego Bay and Tijuana River watersheds which effectively addresses the highest priority water quality problems in the watershed.

While we acknowledge that the FY 04 Annual Reports for these watersheds do not include extensive language that provides strong linkages between the identified activities and the constituents they are intended to address, the FY 04 Annual Reports do include substantial lists of activities that the City is implementing in our watersheds to address likely and known sources of constituents of concern. The FY 04 Annual Reports did report, as identified in Section II – Implementation, a series of structural and non-structural activities that are addressing water quality problems in the City's watersheds. Examples of the some of the activities the City has undertaken in each of the watershed are summarized below.

- Erosion Control Requirements (*Peñasquitos & San Dieguito WURMPs*): To address sediment, which is a constituent of concern in the Peñasquitos Watershed, the City of San Diego requires additional erosion and sediment control measures on construction sites beyond the City's standard erosion control requirements to reduce the potential for sedimentation in San Dieguito and Peñasquitos Lagoons (Ordinance No. 00-17068, adopted April 18, 1988). These watershed-specific requirements, apply to projects near the coast that drain into either San Dieguito or Peñasquitos Lagoons, and were in place throughout FY 04. This ongoing effort is not a jurisdictional Urban Runoff Management Program (JURMP) activity.

10-5015.02



Storm Water Pollution Prevention Program

1970 B Street, MS 27A • San Diego, CA 92102  
Hotline (619) 235-1000 Fax (619) 525-8641

- San Diego River Restoration Project (*San Diego River WURMP*): Although this project was not reported in the FY 04 Annual Report in error, the City of San Diego partnered with the San Diego River Park Foundation (Foundation) and the United States Bureau of Reclamation (Bureau) in July 2003 to begin implementation of the San Diego River Restoration Project, which received \$452,000 in funding from the Bureau. The project objectives were to achieve water quality improvement (with specific focus on total dissolved oxygen, bacteria, and pesticides, which are all identified as conditions of concern in the WURMP), enhance habitat for resident and migratory birds, including the least Bell's vireo, riparian system restoration, and enhancement of recreational opportunities. To achieve these objectives, the project included the development of a plan to improve the river corridor. In FY 04, the City assisted the Foundation and Bureau in the initial stages of program development. The plan has since been completed and the City is working with the Foundation and Bureau to implement improvements identified in the program. This effort is not a JURMP activity.
- Chollas Creek Enhancement Project (*San Diego Bay WURMP*): The City received a \$2,244,000 grant from the State Water Resources Control Board to implement a concrete removal and creek restoration project in Chollas Creek in 2004. The project, which is currently at 90% design, completed the State's process for approving the grant agreement in June 2004. In addition, in FY 04 the City completed the process for hiring an engineering firm to complete the design work for the project. Once completed, the project will improve the natural filtration abilities in the creek, thereby addressing multiple constituents of concern in the Pueblo Watershed including, metals, bacteria, and Diazinon. The project also includes an education component that is focusing on reducing the sources of pesticides in Chollas Creek through an integrated pest management campaign. This effort is not a JURMP activity.
- Regional Integrated Pest Management (IPM) Campaign (*Tijuana River WURMP*): In FY 04 the City worked with the County of San Diego to finalize the scope and contract for a Prop 13 grant from the State Water Resources Control Board to develop and implement an IPM campaign in the San Diego region, including the Tijuana River Watershed. As a partner agency in the grant, the City committed to managing a residential awareness survey, preparation of general IPM educational materials for residents, and production & ad placement for an IPM public service announcement. The project is now in the implementation phase. This effort is not a JURMP activity.

While we feel that these efforts are significant, we also wish to continue to work with our watershed partners and your staff to continue to strengthen and improve our efforts. With the benefit of discussion with your staff and coordination with our watershed partners since the completion of the FY 04 Annual Reports in January 2005, we have made substantial progress in continuing to refine our WURMP programs. In an effort to improve the WURMP programs, we offer some of the City's concepts and ideas that have evolved over the last nine months. We recommend that your staff consider these concepts during the drafting of the next Municipal Permit.

*Baseline vs. Focused Activities.* A great deal of time has been spent by the City participating with the Copermittees in identifying the Municipal Permit's intended distinctions between jurisdictional and watershed efforts. Equally important, the City has spent considerable time structuring programs that are simple, efficient and effective within the City's large geographic and organizational framework. What we have found is that because the City's boundaries extend across six of the region's nine watersheds, it's simpler for the City to view the Municipal Permit's concept of watershed activities as essentially "focused" activities addressing specific constituents of concern, regardless of the watershed, which would be conducted above and beyond the "baseline" activities required by the jurisdictional urban runoff management program (JURMP) components of the Municipal Permit. Attempting to define geographic divisions within the City's various implementation programs often divides and adds complexity to our efforts. In addition, while in some cases the geographic extent of constituent sources are limited to one watershed or even sub-watershed and should be addressed with focused activities at that scale, many sources of constituents of concern extend across watersheds.

*Increasing the Efficiency of our Water Quality Efforts.* The Copermittees have agreed with the approach outlined in the Long Term Effectiveness Assessment (submitted to the Regional Board in August 2005), which identifies the need to monitor and review data by watershed (or even sub-watershed). The City also supports a watershed-based monitoring and assessment approach. In addition, the City agrees with the recently submitted Report of Waste Discharge that implementation is most efficiently conducted at a jurisdictional level, due to the bureaucratic structure within which each jurisdiction must operate. Therefore, based on findings developed from watershed-based monitoring and assessment, we feel that jurisdictions should be able to implement independent activities as part of WURMP efforts, if they are part of a coordinated effort. In addition, as mentioned above, it is often most efficient for the City to implement activities jurisdictionally. For the City, jurisdictional implementation is regional, and when appropriate, these regional efforts should be considered watershed activities.

*"Watershed Activity" Defined.* Considering the above distinctions, we view WURMP activities as best management practices (BMPs) that address a pollutant and/or source within a particular watershed (efforts should focus on High Priority Water Quality Issues and Conditions of Concern, or COC) that is either a new activity beyond baseline Jurisdictional Urban Runoff Management Program (JURMP) activities, or increases or modifies baseline JURMP activities to better address pollutant sources in the watershed. WURMP activities do not have to be implemented watershed wide; the activities can be implemented by one or more jurisdictions within their jurisdictional boundaries in the watershed if part of a coordinated set of activities. In general, if the activity is required by a JURMP Permit section, it would be considered a jurisdictional activity. Any other activity that addresses pollutant sources in the watershed, including modification of JURMP activities, could potentially be identified as a watershed activity. In addition, if a focused activity addresses a constituent of concern in a watershed, and it is more effective for that Copermittee to implement the activity in an area larger than the watershed, it would still be considered a watershed activity.



*Improved Linkages Between Constituents of Concern & Activities.* Over the past several months the City prepared a re-formatted watershed activities table to clearly demonstrate how our activities are addressing watershed constituents of concern (see attached). The list provides a subjective method of comparing the relative feasibility of implementing various potential projects, and provides a format that demonstrates which constituents of concern each potential project would address. It's through these linkages that the City and it's project partners could make more informed decisions about which activities would best address known or likely sources of constituents of concern. Offering this table as a tool, the City will continue to work with it's watershed partners to improve the linkages in our reporting between constituents of concern and our watershed activities.

Finally, we will continue to work with our watershed partners to submit our updated activities lists in each watershed as part of the FY 05 Annual Reports. We encourage your staff to contact us if more explanation is necessary to obtain a clear understanding of our approach to realizing water quality improvement and permit compliance. Please feel free to contact me at (619) 525-8644, or Storm Water Specialist Drew Kleis at (619) 525-8623.

*I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.*

Sincerely,



Chris Zirkle  
Deputy Director

CZ:dk

Attachment

cc: Scott Tulloch, Director, Metropolitan Wastewater Department  
Bob Ferrier, Assistant Director, Metropolitan Wastewater Department

Table 1: Draft WURMP water quality activities table.

Potential Projects, Projects In Process, or Projects Completed <sup>2</sup>	Constituents of Concern (COC) (Examples listed below)															Feasibility of Implementation 1=Very difficult 2=difficult 3=moderate	Regulatory Priority  1=low 2=medium 3=high	Relative Score	
	Indicator Bacteria		Metals (Zn,Pb,Cu,Cd)		Pesticides		Toxicity		Eutrophication			Turbidity/TDS							
	Sources Addressed																		
		etc.	Roads and Automobiles	Residential & Commercial	etc.	Golf Courses and Parks	Agriculture / Nurseries	Pesticide Use	Residential & Commercial	etc.	Golf Courses and Parks	Agriculture / Nurseries	etc.	Golf Courses and Parks	Agriculture / Nurseries				etc.
	Birds	Mammals																	
Potential Projects																			
Project A	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	21		
Project B	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	19		
Project C	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	19		
Project D	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	8		
etc.																			
Potential Projects																			
Project E	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	30		
Project F	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	24		
Project G	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	19		
Project H	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	16		
etc.																			
Potential Projects																			
Project I	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	30		
Project J			✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	24		
Project K	✓	✓															10		
Project L	✓	✓															10		
etc.																			

<sup>2</sup> Projects in BLACK are research/monitoring projects and projects in RED are treatment BMP projects.